

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRANDON R. JOHNSON

Case No. 2:23-cv-0908-DC-JDP (P)

Plaintiff,

v.

FINDINGS AND RECOMMENDATIONS

WARDEN, *et al.*,

Defendants.

Plaintiff, a state prisoner proceeding pro se, alleged in his first amended complaint that defendants El Dorado County and Matthew French, Sara Reimche, and Alex Luca, all of whom are current or former deputies with the El Dorado County Sheriff's Office, violated his federal and state rights during a July 2021 arrest. ECF No. 17. Defendants French, Reimche, and Luca moved to dismiss the state law claims. ECF No. 46. Defendant El Dorado County also moved to dismiss the complaint. ECF No. 71.

On May 14, 2025, I issued findings and recommendations regarding the motions to dismiss, in which I recommended, among other things, that plaintiff's first amended complaint be dismissed with leave to amend his state law battery and intentional infliction of emotional distress ("IIED") claims against French, and his false arrest claims against French, Luca, and Reimche, to

1 allow plaintiff an opportunity to plead additional facts and to address whether he complied with  
2 the California Government Claims Act. ECF No. 78.

3 Now before the court is plaintiff's second amended complaint, couched as objections to  
4 the findings and recommendations. ECF No. 79. I recommend that the second amended  
5 complaint's state law claims against French, Luca, and Reimche be dismissed without leave to  
6 amend.

7 **Background**

8 In his first amended complaint, plaintiff alleged that on July 4, 2021, as he was returning  
9 to his car after exiting a grocery store, a man approached him and told him that plaintiff's car  
10 belonged to him. ECF No. 17 at 9. Plaintiff alleged that this man brandished a weapon and  
11 chased him into a nearby park. *Id.* A few minutes later, French arrived at the park and tased and  
12 tackled plaintiff. *Id.* Plaintiff alleged that French began kicking, punching, stomping, and  
13 choking plaintiff until he lost consciousness. *Id.* Then French dragged plaintiff to a nearby tree  
14 and continued beating him in the head, causing him to suffer a traumatic brain injury. *Id.* at 9-10.  
15 A few minutes later, Luca and Reimche arrived, and all three defendants handcuffed plaintiff. *Id.*  
16 at 10. Plaintiff was transported to a nearby hospital, and as a result of this incident suffered  
17 humiliation, emotional distress, pain, suffering, and medical costs. *Id.*

18 Plaintiff also alleged that this practice of excessive force was consistent with  
19 institutionalized practice of the El Dorado County Sheriff's Office. *Id.* He alleged that Sergeant  
20 Brown and Sheriff Leikauf authorized the actions of French, Luca, and Reimche by failing to  
21 discipline them appropriately and by failing to take adequate precautions in hiring them. *Id.* at  
22 11.

23 Defendants French, Reimche, and Luca moved to dismiss the state law claims, *see* ECF  
24 No. 46, and defendants El Dorado County also moved to dismiss the complaint, ECF No. 71.  
25 After review of the pleadings and applicable law, I recommend that plaintiff's first amended  
26 complaint be dismissed (1) with leave to amend his state law battery and IIED claims against  
27 French, and false arrest claims against French, Luca, and Reimche, to allow plaintiff an  
28 opportunity to plead additional facts and to address whether he complied with the California

1 Government Claims Act, and (2) that plaintiff's failure to intervene claim against Reimche and  
2 Luca be dismissed without leave to amend. ECF No. 78. I also recommend that plaintiff's  
3 ratification claim against El Dorado County be dismissed without leave to amend. *Id.*

4 Specific to plaintiff's state law battery and IIED claims against French, and false arrest  
5 claims against French, Luca, and Reimche, I informed plaintiff that his first amended complaint  
6 failed to demonstrate that he complied with the California Government Claims Act. *Id.* at 6. I  
7 explained that a plaintiff who failed to comply with the California Government Claims Act is  
8 subject to a motion to dismiss, and that the court had the discretion to dismiss with leave to  
9 amend to obtain compliance with the Act unless the failure to comply could not be cured by the  
10 allegation of other facts. *Id.* at 5-6. I stated the following:

11 Under the current circumstances, it is not apparent that plaintiff's  
12 state law claims against French, Reimche, and Luca could not be  
13 cured by the allegation of other facts, such as the date plaintiff filed  
14 the government claim, what entity he sent the claim to, and to  
15 whom he addressed the complaint. As such, plaintiff's state law  
battery and IIED claims against French, and false arrest claims  
against French, Luca, and Reimche, should be dismissed with leave  
to amend for the purpose of allowing plaintiff to demonstrate that  
he complied with the California Government Claims Act.

16 *Id.* at 6. I informed plaintiff that if he wished to amend those state law claims, he could do so  
17 within twenty-one days. *Id.* at 10-11.

18 Plaintiff "objected" to the findings and recommendations. ECF No. 79. However, his  
19 objections appear to be a second amended complaint. *See generally id.* As such, I will screen the  
20 second amended complaint against the backdrop of my prior findings and recommendations.

### 21 **Second Amended Complaint**

22 In plaintiff's second amended complaint, he realleges his false arrest, battery, and IIED  
23 claims against French, Reimche, and Luca. *See id.* Notably, plaintiff makes no allegations that  
24 he has complied with the California Government Claims Act, such as when he filed the claim,  
25 who he sent the claim to, or to whom he addressed the complaint. He also attempts to add  
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28

1 another defendant. *See id.* at 2. Plaintiff also reraises his Fourth Amendment excessive force  
 2 claim against French, Reimche, and Luca, and a Fifth and Eighth Amendment claim. *Id.* at 3-5.<sup>1</sup>

3 **Analysis**

4 A federal court must screen the complaint of any claimant seeking permission to proceed  
 5 *in forma pauperis*. *See* 28 U.S.C. § 1915(e). The court must identify any cognizable claims and  
 6 dismiss any portion of the complaint that is frivolous or malicious, fails to state a claim upon  
 7 which relief may be granted, or seeks monetary relief from a defendant who is immune from such  
 8 relief. *Id.*

9 A complaint must contain a short and plain statement that plaintiff is entitled to relief,  
 10 Fed. R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to relief that is plausible on its  
 11 face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not  
 12 require detailed allegations, but legal conclusions do not suffice. *See Ashcroft v. Iqbal*, 556 U.S.  
 13 662, 678 (2009). If the allegations “do not permit the court to infer more than the mere  
 14 possibility of misconduct,” the complaint states no claim. *Id.* at 679. The complaint need not  
 15 identify “a precise legal theory.” *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024,  
 16 1038 (9th Cir. 2016). Instead, what plaintiff must state is a “claim”—a set of “allegations that  
 17 give rise to an enforceable right to relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264  
 18 n.2 (9th Cir. 2006) (en banc) (citations omitted).

19 The court must construe a pro se litigant’s complaint liberally. *See Haines v. Kerner*, 404  
 20 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant’s complaint “if it  
 21 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which  
 22 would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017).  
 23 However, ““a liberal interpretation of a civil rights complaint may not supply essential elements  
 24 of the claim that were not initially pled.”” *Brunsv v. Nat’l Credit Union Admin.*, 122 F.3d 1251,

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25 <sup>1</sup> Plaintiff also raised a Fourth Amendment excessive force claim in his first amended  
 26 complaint, which defendants did not move to dismiss. *See generally* ECF Nos. 46, 71. As such,  
 27 the Fourth Amendment claim was not addressed in the prior findings and recommendations. *See*  
 28 ECF No. 78 at 1-2 n.1. Plaintiff does reraise the claim in his second amended complaint, and his  
 allegations are sufficient to allow the Fourth Amendment claim to continue to move forward in  
 this case. *See* ECF No. 79 at 3-5.

1 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

2 The California Government Claims Act bars claims for damages under state law against a  
3 public employee unless the claim is first presented to the Department of General Services—which  
4 must occur within six months of the alleged injury. *See Karim-Panahi v. Los Angeles Police*  
5 *Dep’t*, 839 F.2d 621, 627 (9th Cir. 1988) (“Karim-Panahi’s pendent state law tort claims against  
6 both the individual and public entity defendants are barred unless he presented them to the City  
7 and the LAPD before commencing suit.”). “[C]ompliance with the claims statute is mandatory  
8 and failure to file a claim is fatal to the cause of action.” *Young v. City of Visalia*, 687 F. Supp.  
9 2d 1141, 1152 (E.D. Cal. 2009) (quoting *Hacienda La Puente Unified Sch. Dist. v. Honig*, 976  
10 F.2d 487, 494 (9th Cir. 1992)). A plaintiff who fails to comply with California Government  
11 Claims Act is subject to a motion to dismiss, and the court has discretion to dismiss with leave to  
12 amend to obtain compliance with the Act, unless it “could not possibly be cured by the allegation  
13 of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (internal quotation marks and  
14 citation omitted).

15 Plaintiff’s state law claims against defendants should be dismissed without leave to  
16 amend. Plaintiff was given leave to amend his state law claims against French, Reimche, and  
17 Luca for the purpose of supporting his allegation that he did comply with the California  
18 Government Claims Act. *See* ECF No. 78 at 5-6. His second amended complaint, however, fails  
19 to allege facts that demonstrate compliance. As a result, it “appears beyond doubt that the  
20 plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *See*  
21 *Hayes*, 849 F.3d at 1208. Moreover, to the extent plaintiff attempts to raise new claims or add  
22 additional parties, such action is beyond what was previously allowed by the guidance in the prior  
23 findings and recommendations. Thus, plaintiff’s state law claims against French, Reimche, and  
24 Luca should be dismissed without leave to amend, and the case should move forward solely on  
25 plaintiff’s Fourth Amendment excessive force claim against French.

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## Conclusion

Accordingly, it is RECOMMENDED that:

3           1. Plaintiff's state law battery and IIED claims against French, and false arrest claims  
4 against French, Luca, and Reimche, ECF No. 79, be DISMISSED without leave to amend.

5           2. The action be allowed to proceed solely on plaintiff's Fourth Amendment excessive  
6 force claim against French.

7 These findings and recommendations are submitted to the United States District Judge  
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days of  
9 service of these findings and recommendations, any party may file written objections with the  
10 court and serve a copy on all parties. Any such document should be captioned “Objections to  
11 Magistrate Judge’s Findings and Recommendations,” and any response shall be served and filed  
12 within fourteen days of service of the objections. The parties are advised that failure to file  
13 objections within the specified time may waive the right to appeal the District Court’s order. *See*  
14 *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir.  
15 1991).

IT IS SO ORDERED.

Dated: June 24, 2025

Jeremy D. Peterson  
JEREMY D. PETERSON  
UNITED STATES MAGISTRATE JUDGE